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09/770,975	01/26/2001	Frank DeMartin	450103-3873.1	8006

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NEW YORK, NY 10151

EXAMINER

VAUGHN JR, WILLIAM C

ART UNIT	PAPER NUMBER
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2143

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DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

P24

Office Action Summary

Application No.

09/770,975

Applicant(s)

DEMARTIN ET AL.

Examiner

William C. Vaughn, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/26/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. This Action is in regards to the most recent information received on 26 January 2001.

Information Disclosure Statement

2. The references listed in the Information Disclosure Statement submitted on 26 January 2001, have been considered by the examiner (see attached PTO-1449).
3. This application has been examined. Claims 13-20 are pending. The objections and rejections cited are as stated below:

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 13-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluts, U.S. Patent No- 5,616,876 in view of Atcheson et al. (Atcheson), U.S. Patent No. 5,583,763 and further in view of Schiller et al. (Schiller), U.S. Patent No. 5,499,046.
6. Regarding independent claims 13 and 17, (e.g., exemplary independent claim 13), Cluts discloses the invention substantially as claimed. Cluts discloses a system for accessing, over a wide area network, multimedia equipment for reproducing multimedia information recorded on data storage media, comprising: (Cluts teaches using a distribution network that includes a world wide ATM compatible network with links to the Internet in addition to the distributed network

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being implemented as a hybrid network environment as well as teaching a consumer system that includes the equipment necessary to receive program information), [see Cluts, Col. 6, lines 29-33, Col. 6, lines 20-37 and Col. 8, lines 5-8], generating means for generating a list of contents of multimedia information recorded on data storage media of a first user at a first equipment location (Cluts teaches a playlist that is generated for the subscriber by the service provider or a publisher), [see Cluts, Fig. 4, Col. 12, lines 40-64]; converting means for converting the rearranged list of contents to at least one command for controlling the multimedia equipment [see Cluts, Fig. 10, steps 1025-1030] and a controlling means for controlling the multimedia equipment based on said one command (Cluts teaches this at step 1030). However, Cluts does not disclose the list of contents being generated by a first user and transferred via said wide area network to a second user at a second equipment location, said second user modifying the generated list of contents by and rearranging selecting items to produce a rearranged list of contents.

7. In the same field of endeavor, Atcheson discloses (e.g., selection base multiuser system). Atcheson discloses a the list of contents being generated by a first user and transferred via said wide area network and then modifies the generated list of contents by selecting items from said list of contents and arranging the selected items in a predetermined order to produce a modified list of contents (Atcheson teaches the user is given a menu of choices for proceeding within the service and one of the option is for the user to define "preferences", or a list of their favorite artists. Atcheson also teaches ranking the generated recommendations of music for any one of the user in which a search of the database of the same of objects from different users. And each match will generate one object that was not listed by the subject and then a calculation is made of

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the total number of occurrences from each such object and create two rank tables and then a comparison is made of the rankings between the first and second tables and which is used to create a third table and by using the weighted averages of the searches a final table is made of those subjects ranging from most likely to enjoy to least likely to enjoy), [see Atcheson, Col. 4, lines 5-12, 56-67, Col. 5, lines 25-67 and Col. 6, lines 1-6].

8. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined Atcheson's multi-user system with the system of Cluts for the purpose of the user to make a selection from a large collection of digital objects by generating a selection of information for the network, [see Atcheson, Col. 1, lines 50-55].

However, Cluts-Atcheson does not explicitly disclose a second user modifying the generated list.

9. In the same field of endeavor, Schiller discloses (e.g., CATV distribution system). Schiller discloses a second user modifying the generated list (Schiller teaches the generating, editing and modifying of a playlist. Schiller also teaches that each channel scheduler is in communication with both headends which broadcast their particular channels and that each scheduler while in communication with the headends allow operators or application software at different stations to update headends with respect to new or modified scheduling information corresponding to their respective channels), [see Schiller, Abstract, Col. 2, lines 19-50, Col. 3, lines 64-67, Col. 4, lines 1-67 and Col. 5, lines 1-31].

10. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated Schiller's teachings of CATV distribution system with the teachings of Cluts-Atcheson, for the purpose of allowing different companies controlling the output of particular CATV channels to generate, edit, and modify the playlist

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schedules of their respective channels from locations of their choosing [see Schiller, Col. 1, lines 60-67]. By this rationale claim 13 is rejected.

11. Regarding claim 14, Cluts-Atcheson and Schiller discloses a server [see Cluts, Fig. I] for providing a user interface for requesting the list of content to be modified (Atcheson teaches given the user the opportunity to modify the list of their favorite artist by using the buttons on their telephone or by operating the keyboard or mouse or other input device on their computer), [see Atcheson, Col. 4, lines 13-19] and said server operative to transfer the list of contents over the wide area network to the second user at the second equipment locating, (Cluts teaches that a CMS system includes one or more storage servers, which operates to retrieve and to transmit the digitized data as required by clients of the CN15 system), [see Cluts, Col. 6, lines 30-67, Col. 7, lines 67 and Col. 12, lines 61-65], (Cluts further teaches a method of searching for and matching the entries in the audio content database based upon a "style slider" indicator), [see Cluts, Col. 16, lines 1-10]. The same motivation that was utilized in claim 13 applies equally as well to claim 14. By this rationale claim 14 is rejected.

12. Regarding claim 15, Cluts-Atcheson and Schiller further discloses the list of contents is generated on the basis of data uniquely identifying the contents of each data storage medium in the data storage media (Cluts teaches a plurality of programming information items stored in a data storage device), [see Cluts, Col. 15, lines 14-18 and Col. 26, lines 47-50]. By this rationale claim 15 is rejected.

13. Regarding claim 16, Cluts-Atcheson and Schiller discloses further comprising a server operative to transmit the generated list of contents to the second user, receive the rearranged list from the second user, form a command script file based on the rearranged list, and transmit the

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command script file to the multimedia equipment of the first user which parses the command script file to obtain a series of control commands to control the multimedia equipment (The Examiner takes Official Notice (see MPEP 2144.03)). By this rationale claim 16 is rejected.

14. Claims 17-20 list all the same elements of claims 13-16, but in method form rather than system form. Therefore, the supporting rationale of the rejection to claims 13-16 applies equally as well to claims 17-20.

Claim Rejections - 35 USC § 103

15. **Claims 13-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluts, U.S. Patent No. 5,616,876 in view of Atcheson et al. (Atcheson), U.S. Patent No. 5,583,763 and further in view of Foladare et al. (Foladare), U.S. Patent No. 5,819,160.

16. Regarding independent claims 13 and 17, (e.g., exemplary independent claim 13), Cluts discloses the invention substantially as claimed. Cluts discloses a system for accessing, over a wide area network, multimedia equipment for reproducing multimedia information recorded on data storage media, comprising: (Cluts teaches using a distribution network that includes a world wide ATM compatible network with links to the Internet in addition to the distributed network being implemented as a hybrid network environment as well as teaching a consumer system that includes the equipment necessary to receive program information), [see Cluts, Col. 6, lines 29-33, Col. 6, lines 20-37 and Col. 8, lines 5-8], generating means for generating a list of contents of multimedia information recorded on data storage media of a first user at a first equipment location (Cluts teaches a playlist that is generated for the subscriber by the service provider or a publisher), [see Cluts, Fig. 4, Col. 12, lines 40-64]; converting means for

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converting the rearranged list of contents to at least one command for controlling the multimedia equipment [see Cluts, Fig. 10, steps 1025-1030] and a controlling means for controlling the multimedia equipment based on said one command (Cluts teaches this at step 1030). However, Cluts does not disclose the list of contents being generated by a first user and transferred via said wide area network to a second user at a second equipment location, said second user modifying the generated list of contents by and rearranging selecting items to produce a rearranged list of contents.

17. In the same field of endeavor, Atcheson discloses (e.g., selection base multiuser system). Atcheson discloses a the list of contents being generated by a first user and transferred via said wide area network and then modifies the generated list of contents by selecting items from said list of contents and arranging the selected items in a predetermined order to produce a modified list of contents (Atcheson teaches the user is given a menu of choices for proceeding within the service and one of the option is for the user to define "preferences", or a list of their favorite artists. Atcheson also teaches ranking the generated recommendations of music for any one of the user in which a search of the database of the same of objects from different users. And each match will generate one object that was not listed by the subject and then a calculation is made of the total number of occurrences from each such object and create two rank tables and then a comparison is made of the rankings between the first and second tables and which is used to create a third table and by using the weighted averages of the searches a final table is made of those subjects ranging from most likely to enjoy to least likely to enjoy), [see Atcheson, Col. 4, lines 5-12, 56-67, Col. 5, lines 25-67 and Col. 6, lures 1-6].

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18. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined Atcheson's multi-user system with the system of Cluts for the purpose of the user to make a selection from a large collection of digital objects by generating a selection of information for the network, [see Atcheson, Col. 1, lines 50-55].

However, Cluts-Atcheson does not explicitly disclose a second user modifying the generated list.

19. In the same field of endeavor, Foladare discloses in (e.g., a programmable radio subscription system for receiving selectively defined information). Foladare discloses a second user modifying the generated list (Foladare teaches a subscriber remotely connects to a subscription control system to selectively define or edit one or more playlists and that a control program stored in a memory of the main control unit is executed and that a program module may control the creation of a playlist by a subscriber remotely connected to the main control unit, whole another program module may control the assembly of a particular playlist for transmission to a particular subscriber), [see Foladare, Figs. 2 and 3, Col. 2, lines 26-54, Col. 5, lines 15-67 and Col. 6, lines 1-67 and Col. 7, lines 1-18].

20. Accordingly, it would have been obvious, to one having ordinary skill in the art at the time the invention was made to have incorporated Foladare's programmable radio subscription system for receiving selectively defined information with the teachings of Cluts-Atcheson, for the purpose of enabling a subscriber to remotely define and identify one or more playlists, each playlist having information content selected by the subscriber from a subscription database for transmission [see Foladare, Col. 2, lines 1-7], which would have provided for editing and modification of a playlist. By this rationale claim 13 is rejected.

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21. Regarding claim 14, Cluts-Atcheson and Foladare discloses a server [see Cluts, Fig. 1] for providing a user interface for requesting the list of content to be modified (Atcheson teaches given the user the opportunity to modify the list of their favorite artist by using the buttons on their telephone or by operating the keyboard or mouse or other input device on their computer), [see Atcheson, Col. 4, lines 13-19] and said server operative to transfer the list of contents over the wide area network to the second user at the second equipment locating (Cluts teaches that a CMS system includes one or more storage servers, which operates to retrieve and to transmit the digitized data as required by clients of the CN15 system), [see Cluts, Col. 6, lines 30-67, Col. 7, lines 67 and Col. 12, lines 61-65], (Cluts further teaches a method of searching for and matching the entries in the audio content database based upon a "style slider" indicator), [see Cluts, Col. 16, lines 1-10]. The same motivation that was utilized in claim 13 applies equally as well to claim 14. By this rationale claim 14 is rejected.

22. Regarding claim 15, Cluts-Atcheson and Foladare further discloses the list of contents is generated on the basis of data uniquely identifying the contents of each data storage medium in the data storage media (Cluts teaches a plurality of programming information items stored in a data storage device), [see Cluts, Col. 15, lines 14-18 and Col. 26, lines 47-50]. By this rationale claim 15 is rejected.

23. Regarding claim 16, Cluts-Atcheson and Foladare discloses further comprising a server operative to transmit the generated list of contents to the second user, receive the rearranged list from the second user, form a command script file based on the rearranged list, and transmit the command script file to the multimedia equipment of the first user which parses the command

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script file to obtain a series of control commands to control the multimedia equipment (The Examiner takes Official Notice (see MPEP 2144.03)). By this rationale claim 16 is rejected.

24. Claims 17-20 list all the same elements of claims 13-16, but in method form rather than system form. Therefore, the supporting rationale of the rejection to claims 13-16 applies equally as well to claims 17-20.

Claim Rejections - 35 USC § 103

25. Claims 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cluts, U.S. Patent No. 5,616,876 in view of Atcheson et al. (Atcheson), U.S. Patent No. 5,583,763 and in further view of Duso et al. (Duso), U.S. Patent No. 5,892,915.

26. Regarding independent claims 13 and 17, (e.g., exemplary independent claim 13), Cluts discloses the invention substantially as claimed. Cluts discloses a system for accessing, over a wide area network, multimedia equipment for reproducing multimedia information recorded on data storage media, comprising: (Cluts teaches using a distribution network that includes a world wide ATM compatible network with links to the Internet in addition to the distributed network being implemented as a hybrid network environment as well as teaching a consumer system that includes the equipment necessary to receive program information), [see Cluts, Col. 6, lines 29-33, Col. 6, lines 20-37 and Col. 8, lines 5-8], generating means for generating a list of contents of multimedia information recorded on data storage media of a first user at a first equipment location (Cluts teaches a playlist that is generated for the subscriber by the service provider or a publisher), [see Cluts, Fig. 4, Col. 12, lines 40-64]; converting means for converting the rearranged list of contents to at least one command for controlling the multimedia

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equipment [see Cluts, Fig. 10, steps 1025-1030] and a controlling means for controlling the multimedia equipment based on said one command (Cluts teaches this at step 1030). However, Cluts does not disclose the list of contents being generated by a first user and transferred via said wide area network to a second user at a second equipment location, said second user modifying the generated list of contents by and rearranging selecting items to produce a rearranged list of contents.

27. In the same field of endeavor, Atcheson discloses (e.g., selection base multiuser system). Atcheson discloses a the list of contents being generated by a first user and transferred via said wide area network and then modifies the generated list of contents by selecting items from said list of contents and arranging the selected items in a predetermined order to produce a modified list of contents (Atcheson teaches the user is given a menu of choices for proceeding within the service and one of the option is for the user to define "preferences", or a list of their favorite artists. Atcheson also teaches ranking the generated recommendations of music for any one of the user in which a search of the database of the same of objects from different users. And each match will generate one object that was not listed by the subject and then a calculation is made of the total number of occurrences from each such object and create two rank tables and then a comparison is made of the rankings between the first and second tables and which is used to create a third table and by using the weighted averages of the searches a final table is made of those subjects ranging from most likely to enjoy to least likely to enjoy), [see Atcheson, Col. 4, lines 5-12, 56-67, Col. 5, lines 25-67 and Col. 6, lines 1-6].

28. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined Atcheson's multi-user system with the system of Cluts for

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the purpose of the user to make a selection from a large collection of digital objects by generating a selection of information for the network, [see Atcheson, Col. 1, lines 50-55].

However, Cluts-Atcheson does not explicitly disclose a second user modifying the generated list.

29. In the same field of endeavor, Duso discloses in an analogous art a system for dynamically editing of a playlist. Duso discloses a second user modifying the generated list [see Duso, Figures 34 and 35, Col. 44, lines 10-26 and Col. 15, lines 10-67].

30. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated Duso's system for dynamically editing of a playlist with the teachings of Cluts-Atcheson, for the purpose of providing broadcast playback functionality within a client-server protocol system the motivation is provided by Duso by stating that the video clips can be created and edited by the server and client [see Duso, Col. 56, lines 35-44]. By this rationale claim 13 is rejected.

31. Regarding claim 14, Cluts-Atcheson and Duso discloses a server [see Cluts, Fig. 1] for providing a user interface for requesting the list of content to be modified (Atcheson teaches given the user the opportunity to modify the list of their favorite artist by using the buttons on their telephone or by operating the keyboard or mouse or other input device on their computer), [see Atcheson, Col. 4, lines 13-19] and said server operative to transfer the list of contents over the wide area network to the second user at the second equipment locating, (Cluts teaches that a CMS system includes one or more storage servers, which operates to retrieve and to transmit the digitized data as required by clients of the CN15 system), [see Cluts, Col. 6, lines 30-67, Col. 7, lines 67 and Col. 12, lines 61-65], (Cluts further teaches a method of searching for and matching the entries in the audio content database based upon a "style slider" indicator), [see Cluts, Col.

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16, lines 1-10]. The same motivation that was utilized in claim 13 applies equally as well to claim 14. By this rationale claim 14 is rejected.

32. Regarding claim 15, Cluts-Atcheson and Duso further discloses the list of contents is generated on the basis of data uniquely identifying the contents of each data storage medium in the data storage media (Cluts teaches a plurality of programming information items stored in a data storage device), [see Cluts, Col. 15, lines 14-18 and Col. 26, lines 47-50]. By this rationale claim 15 is rejected.

33. Regarding claim 16, Cluts-Atcheson and Duso discloses further comprising a server operative to transmit the generated list of contents to the second user, receive the rearranged list from the second user, form a command script file based on the rearranged list, and transmit the command script file to the multimedia equipment of the first user which parses the command script file to obtain a series of control commands to control the multimedia equipment (The Examiner takes Official Notice (see MPEP 2144.03)). By this rationale claim 16 is rejected.

34. Claims 17-20 list all the same elements of claims 13-16, but in method form rather than system form. Therefore, the supporting rationale of the rejection to claims 13-16 applies equally as well to claims 17-20.

Double Patenting

35. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

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Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

36. Claims 1-20 of U.S. Patent No. 6,356,933 contain(s) every element of claims 13-20 of the instant application and as such anticipate(s) claims 1-24 of the instant application.

“A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. *In re Longi*, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); *In re Berg*, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). “

ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

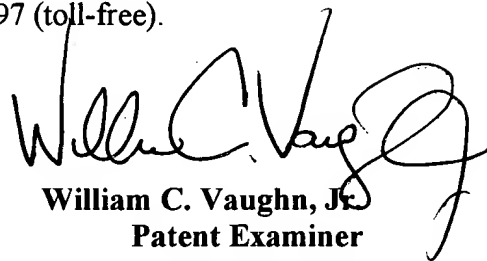
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Conclusion

37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Vaughn, Jr. whose telephone number is (703) 306-9129. The examiner can normally be reached on 8:00-6:00, 1st and 2nd Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on (703) 308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William C. Vaughn, Jr.
Patent Examiner
Art Unit 2143
27 May 2004